UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

TRANSDEV SERVICES, INC.,[1]

Employer,

and Case 05-RC-268864

AMIR DAOUD,

Petitioner,

and

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 2,
AFL-CIO, CLC,

Union.

DECISION AND ORDER

Amir Daoud ("Petitioner") filed the petition herein with the National Labor Relations Board ("Board") under Section 9(c) of the National Labor Relations Act, as amended ("Act"), seeking to decertify the Office and Professional Employees International Union, Local 2, AFL-CIO, CLC ("Union") as the exclusive collective-bargaining representative of approximately 52 employees employed by Transdev Services, Inc. ("Employer") at three Employer locations in Virginia. The sole issue in this proceeding is whether the instant petition is barred by a collective-bargaining agreement executed by the Union and the Employer prior to this petition being filed. Petitioner argues that the petition is invalid because the Union misled the unit employees about the negotiations for a successor collective-bargaining agreement, no member was notified about a signed agreement prior to the petition being filed, and no agreement was validly signed prior to the petition being filed. The Employer and the Union, on the other hand, argue that a valid successor collective-bargaining agreement was executed and made effective prior to the petition being filed, thus, the petition is barred from being processed further.

A hearing was held via videoconference on December 3, 2020 before a hearing officer of the Board.[2] The parties were permitted to file post-hearing briefs, to which the Union and the

[1] The Employer's name appears as amended by stipulation of the parties.

[2] Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated the undersigned its authority in this proceeding. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer is a corporation with offices and places of business in Huntington, West Ox, and Fairfax, Virginia, and has been engaged in the business of providing passenger transportation services. In conducting its operations during the 12-month period ending November 30,

Employer availed themselves, and I have carefully considered the respective positions of all parties.[3]

For the reasons set forth below, and in accordance with extent legal authority, I find that the Employer and the Union are parties to a collective-bargaining agreement, the agreement is valid and effective, and consequently serves to bar the processing of this petition. Accordingly, I will dismiss the petition.

I. FACTUAL OVERVIEW

On July 27, 2016, the Union was certified by the Board in Case 05-RC-176580 as the exclusive collective-bargaining representative of the following unit ("Unit"):

> [a]ll full-time and regular part-time road supervisors, station supervisors, dispatchers, classroom trainers, and EOCC controllers employed by [MV Transportation Inc. ("predecessor")] at its Fairfax Connector Division at work sites in Huntington, West Ox, and Fairfax, Virginia, excluding all chief supervisors, assistant chief supervisors, and all other employees represented by a labor organization, clerical office, professional employees, guards, and supervisors as defined in the Act. However, the maintenance supervisor, utility supervisor, and shop foreman are neither included nor excluded from the bargaining unit covered by this certification, inasmuch as the parties did not agree on the inclusion or exclusion of the maintenance supervisor, utility supervisor, and shop foreman, and, because it was directed that they vote subject to challenge and because resolution of their inclusion or exclusion is unnecessary because their ballots were not determinative of the election results.[4]

2020, the Employer performed services valued in excess of $50,000 in states other than the Commonwealth of Virginia.

3. I further find, as also stipulated by the parties, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
4. The parties additionally stipulated, and I find, that the Union is a labor organization within the meaning of the Act.

[3] At the hearing, the hearing officer, pursuant to my direction and Section 102.66(d) of the Board's Rules and Regulations, precluded the Union from raising any issue, presenting any evidence related to an issue, cross-examining any witnesses concerning any issue, and presenting arguments concerning any issue with respect to the contract bar issue because the Union failed to timely file a responsive statement of position ("RSOP"). Section 102.66(d) of the Board's Rules and Regulations required the Union to timely file and serve on the other parties a RSOP, and it failed to do so. I hereby affirm this ruling made on the record.

[4] This unit description appears as it does in the original certification in Case 05-RC-176580. At hearing, the parties stipulated to the following Unit description, which appears in the executed collective-bargaining agreement between the Employer and the Union covering this Unit: all full-time and regular part-time road supervisors, station supervisors, dispatchers, BOCC controllers, gate checker and classroom trainers employed by the Employer at its Fairfax Connector Division with worksites currently in Lorton, Herndon, and Fairfax; but excluding all assistant chief supervisors, auditor driver certification, all other employees represented by a labor organization, clerical, office professional employees, guards and supervisors as defined in the Act. Notwithstanding the difference

On about July 1, 2019, the Employer succeeded the predecessor as the employing entity of the employees in the Unit, and voluntarily recognized the Union as the exclusive collective bargaining representative of the Unit. According to the Employer, at the time that it succeeded the predecessor, it assumed the existing collective-bargaining agreement between the Union and the predecessor, with minor changes.

Beginning in July 2019, the Employer and the Union began negotiating a successor collective-bargaining agreement (the "Agreement"). In June 2020,[5] the Union presented to the bargaining unit a tentative agreement covering non-economic terms agreed to by the Union and Employer. The record discloses that the bargaining unit voted down the non-economic tentative agreement. According to the Union, in about mid-October, the Employer and the Union engaged in a mediation session with an Arbitrator to attempt to resolve a prolonged dispute over the nature of a wage increase set forth in the predecessor collective-bargaining agreement. The mediation session led to the Union and the Employer reaching the Agreement. As part of the mediation, the Employer agreed to give eligible Unit employees an additional two percent wage increase retroactive to July 2019, and an across the board two percent wage increase for all Unit employees retroactive to November 2019.

On about October 21, Union representative Mike Spiller—the individual responsible for representing the Unit and who was a member of the Union's negotiation team that negotiated the Agreement with the Employer—held a videoconference call with Unit members. During the videoconference, Mr. Spiller presented the Agreement to the Unit members, and informed them that based on recommendations from the Union's counsel, the Arbitrator, and based on his experience, the Agreement was the best set of terms that the Unit was going to receive from the Employer. It is undisputed that during this call, Mr. Spiller informed the Unit employees that he intended to sign the Agreement, and that he did not need a ratification vote or Unit members' approval to do so.

On October 30, Mr. Spiller executed the written Agreement, and the following day, Employer General Manager Terence Thompson did the same. Aside from the last page of the Agreement, both parties initialed every page. According to the face of the Agreement, it is effective from October 30 through November 10, 2023. The Agreement contains substantial terms and conditions of employment, including articles related to recognition, union security, wages, hours of work, discipline, grievance and arbitration procedures, benefits, leave policies, and others. The Employer has given effect to the Agreement, and has begun implementing the terms and conditions outlined in the Agreement. Lastly, the Agreement does not contain a ratification requirement.

The Petitioner filed the petition on November 10.

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between the unit descriptions, no party to this matter disputes that the petitioned-for bargaining unit herein is the same Unit involved in the Board's certification in case 05-RC-176580.

[5] Hereinafter, all dates occurred in 2020, unless otherwise noted.

II. POSITIONS OF THE PARTIES

Petitioner principally argues that the agreement is invalid and does not bar this petition because the Union misled the bargaining unit for 14 months and did not continue to negotiate the agreement throughout that period. He further argues that none of the Unit members were informed that the Agreement was signed prior to him filing the instant petition. Therefore, Petitioner contends that no valid collective-bargaining agreement was signed prior to this petition being filed.

In contrast, the Employer and the Union contend that the Agreement bars the instant petition from being processed further. To support their positions, the Employer and the Union argue that the Agreement is valid, it meets the Board's definition of a collective-bargaining agreement, it was properly executed, and it became effective prior to the instant petition being filed. Accordingly, the Employer and the Union urge me to find that the Agreement operates as a bar to this petition.

III. APPLICABLE BOARD LAW

The Board's well-settled contract bar doctrine attempts to balance often competing aims of employee free choice and industrial stability. See, e.g. *Seton Medical Center*, 317 NLRB 87, 88 (1995). This doctrine is intended to afford the contracting parties and the employees a reasonable period of stability in their relationship without interruption and at the same time to afford the employees the opportunity, at reasonable times, to change or eliminate their bargaining representative, if they wish to do so. The burden of proving that a contract is a bar is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970). "The single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." *Seton Medical Center*, 317 NLRB 87, 87 (1995).

When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the agreement meets certain requirements such that it operates to serve as a contractual bar to the further processing of that petition. See *Hexton Furniture Co.*, 111 NLRB 342 (1955). A contract must be a "collective" agreement. *J. P. Sand & Gravel Co.*, 222 NLRB 83 (1976). It must be reduced to writing. *Empire Screen Printing, Inc.*, 249 NLRB 718 (1980); *J. Sullivan & Sons Mfg. Corp.*, 105 NLRB 549 (1953). Further, the contract must be signed by authorized representatives of all the parties before the rival petition is filed. *DePaul Adult Care Communities*, 325 NLRB 681 (1998); *Wickly*, *Inc.*, 131 NLRB 467 (1961); *Freuhauf Trailer Co*.,

87 NLRB 589 (1949). The party asserting contract bar has the burden of proving the agreement was signed by the parties prior to the filing of a petition. *Jackson Terrace Associates*, 346 NLRB 180 (2005).

Moreover, a collective-bargaining agreement must contain substantial terms and conditions of employment to which parties can look for guidance in resolving day-to-day problems. *Appalachian Shale Products Co.,* 121 NLRB 1160 (1958). It must also clearly by its terms encompass the employees involved in the petition, and will not constitute a bar if it does not. *Houck Transport Co*., 130 NLRB 270 (1961); *Bargain City, U.S.A., Inc.*, 131 NLRB 803 (1961); *Plimpton Press,* 140 NLRB 975, 975 fn. 1 (1963); *Moore-McCormack Lines*, 181 NLRB 510 (1970). Further, the contract must cover an appropriate unit. *Mathieson Alkali Works*, 51 NLRB 113 (1943); *Indianapolis Power & Light Co*., 76 NLRB 136, 138 fn. 4 (1948); *Moveable Partitions*, 175 NLRB 915, 916 (1969). In considering the appropriateness question, the Board places great weight on bargaining history and "will not disturb an established relationship unless required to do so by the dictates of the Act." *Great Atlantic & Pacific Tea Co*., 153 NLRB 1549, 1550 (1965); *Canal Carting, Inc*., 339 NLRB 969, 970 (2003).

Finally, a master agreement covering more than one plant is not a bar to an election at one of the locations where by its terms the agreement is not effective until a local agreement has been completed, or until the inclusion of the plant has been negotiated by the parties as required by the master agreement, and a petition is filed before these events occur. *Appalachian Shale Products Co.*, 121 NLRB at 1164; *Burns International Security Service*, 257 NLRB 387, 387–388 (1981).

IV. ANALYSIS

As extent Board law requires, I must examine the terms of the Agreement "as they appear within the four corners of the instrument itself" in assessing whether it retains its status as a bar to the instant petition. *Jet-Pak Corporation*, 231 NLRB 552, 553 (1977). After careful review of the Agreement and the record, as well as consideration of the parties' arguments, I find that the Agreement operates as a bar to the processing of this petition.

To begin with, the Agreement is in writing and the record reflects that it is the result of free collective bargaining between the Employer and the Union. The Agreement contains signatures and initials from Mr. Thompson on behalf of the Employer, and Mr. Spiller on behalf of the Union.[6] Both Mr. Spiller and Mr. Thompson testified at the hearing that they signed the Agreement on the date shown on the signatory page—October 30 and October 31, respectively.

[6] No party asserts that Mr. Thompson was not an authorized representative of the Employer. Petitioner challenges the efficacy of Mr. Spiller and the Union's representation of the Unit, but stipulated that Mr. Spiller is a representative of the Union. Petitioner also stipulated that Mr. Spiller has been the Unit representative for at least the prior two years. While Petitioner contends that Mr. Spiller was not authorized to execute a contract without ratification by the Unit, there is no evidence in the record to find the same. Accordingly, for these reasons, I find that Mr. Spiller is an authorized representative of the Unit with the authority to enter into the Agreement on behalf of the Union and the Unit.

Therefore, the Employer and Union have met their burden to show that the Agreement was executed prior to the petition being filed. Also, the Agreement, on its face, clearly states that it became effective on October 30. Thus, the Agreement was executed, and became effective, prior to the filing of the instant petition on November 10.

Additionally, a plain reading of the Agreement shows that it contains substantial terms and conditions of employment, that it encompasses the employees covered in this petition, and that the Unit is appropriate for purposes of collective bargaining. Indeed, no party involved in this proceeding has raised as an issue that the Unit, an established bargaining unit, is inappropriate. Lastly, while the Agreement covers multiple Employer locations, there is no evidence that each of the three locations executes a local agreement, or that the Agreement cannot take effect until the parties conduct individual-site bargaining. On the contrary, the Agreement on its face covers all three locations, and there is no evidence in the record that Unit employees' terms and conditions of employment are covered in any other agreement or document other than the Agreement.[7]

Consequently, because I find the Agreement to be a valid collective-bargaining agreement that conforms to certain bar-quality requirements set forth by the Board and was executed prior to the November 10 petition, I find that the Agreement serves to bar an election in this matter.

V. CONCLUSION AND ORDER

Based on the record evidence, as discussed in detail above, the Employer and the Union have met their burden in establishing that the Agreement operates as a bar to processing this petition further. Thus, I conclude that: (1) the Employer and the Union collectively-bargained the terms and conditions set forth in the Agreement that took effect on October 30; (2) authorized representatives of the Employer and the Union executed the Agreement on October 30 and 31, respectively; (3) the Agreement contains substantial terms and conditions of employment that cover the Unit employees—an appropriate unit—involved in this petition; (4) the Agreement retains its bar status even though it covers multiple Employer locations; and (5) the Agreement was executed, and became effective, prior to the instant petition being filed, and thus operates to bar an election. Accordingly, it is hereby ordered that the petition in this matter is dismissed.

[7] Throughout the hearing, Petitioner, through his own statements or through questions asked of testifying witnesses, presented arguments questioning the effectiveness of the Union's representation of the Unit, in line with allegations typically made in unfair labor practice charges filed against labor organizations. Such arguments are not before me in this proceeding. I am called only to resolve whether a bar exists to conducting an election due to a valid collective-bargaining agreement being executed and in effect prior to the instant petition being filed, and that is the only issue I reach in this Decision and Order.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations you may obtain a request for review of this Decision by filing a request with Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67 (d) and (e) of the Board's Rules and Regulations and must be filed by **January 8, 2021**.

Pursuant to Section 102.5(c) of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.[8] A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Issued at Baltimore, Maryland this 22nd day of December, 2020.

(SEAL)

/s/ Sean R. Marshall

Sean R. Marshall, Regional Director
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[8] On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.